

THE RUTHERFORD INSTITUTE

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November 1, 2013

Dr. Julie Beales, Chief of Staff
Hunter Holmes McGuire Medical Center
1201 Broad Rock Boulevard
Richmond, Virginia 23249

Re: September 25, 2013 letter to John Miska

Dear Dr. Beales:

While America's veterans continue to bear the physical, mental, emotional and economic scars of answering the call to service, it is the duty of each of us to do our part to ensure that they do not bear these burdens alone. For our part, The Rutherford Institute¹ works to ensure that veterans who have put their lives on the line in order to defend our freedoms do not find their own freedoms short-changed. To this end, we have grave concerns about the manner in which you have dealt with John Miska, a Vietnam-era veteran and an outspoken advocate and activist for veterans, especially if it is used as a pretext for denying him necessary medical treatment in the future by improperly barring him from VA health facilities.

Specifically, based on your September 25, 2013 letter to Mr. Miska, it is our understanding that he will be removed from the Charlottesville Community-Based Outpatient Clinic (CBOC) of the Veterans Administration (VA) grounds or suffer "additional restrictions" if he engages in behavior or uses language which you or your staff deem to be hostile and/or intimidating towards the staff. Such a removal would of course prevent Mr. Miska from receiving the medical care to which he is entitled under the laws and regulations enacted to benefit veterans and which is crucial in order to manage his military service-related chronic pain.

While no one, Mr. Miska included, would condone behavior that willfully subjects CBOC staff to abuse, it would also seem that, given the nature of their work in dealing with distressed patients, CBOC staff should be more adept in dealing with a wide range of

¹ The Rutherford Institute is a non-profit civil liberties organization, and our mission includes educating the public about the Bill of Rights and providing free legal representation to individuals whose civil rights are threatened or infringed.

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personalities and complaints. That said, your ultimatum requiring that Mr. Miska be “fully cooperative during future visits” and not engage in behavior or use language which you or your staff deem to be hostile and/or intimidating would result in a situation in which CBOC officials are authorized to make subjective determinations as to what kinds of expression or behavior they find to be hostile and/or intimidating. By insisting that Mr. Miska should be “fully cooperative during future visits,” you suggest that he should not question the actions of VA personnel and not make demands, even if those questions and demands are reasonable and will lead to necessary and/or appropriate care for himself and other veterans. As such, Mr. Miska risks denial of care, either in the short or long term, if he does not remain “fully cooperative” by forfeiting his right to speak out on behalf of veterans.

This kind of warning offends the principles of freedom of speech embodied in the First Amendment. Furthermore, your subjective and vague determination of what constitutes threatening, abusive or intimidating behavior threatens to impose an unwarranted chill upon Mr. Miska’s First Amendment activities, particularly as they relate to his efforts to advocate for better treatment of veterans by the U.S. government and its representative agencies. Indeed, should Mr. Miska be compelled to refrain from speaking out on behalf of himself and other veterans at the risk of losing his medical care, this will constitute a clear violation of his right to freedom of speech protected under the United States Constitution.

Mr. Miska has no objection to maintaining a level of cordiality in his activities at the Charlottesville CBOC and other VA facilities, provided that he is not expected to cease his efforts to advocate for better care for himself and other veterans. Based upon our conversations with Mr. Miska, it appears that your warning to him arises out of Mr. Miska’s legitimate and salutary activities speaking out for veterans and trying to secure for them the health care to which they are entitled as a result of their sacrifices for this country.

As an outspoken advocate for the causes of veterans, Mr. Miska devotes much of his energies to ensuring that veterans receive the care they are due. Mr. Miska is a member of numerous Veterans Service Organizations, including the American Legion, the Veterans of Foreign Wars and Disabled American Veterans. Each week he travels to Walter Reed Medical Center to visit with injured veterans. He has seen first-hand the pain and suffering veterans can experience if they are not given the medical and psychiatric care they need and deserve. When he sees needs not being met or failings in the system, Mr. Miska will speak out and attempt to rectify the situation on behalf of the individual veteran.

Indeed, within the last year, Mr. Miska has filed complaints with the applicable Veterans Integrated Service Network (VISN 6) which have been sustained and which likely are the genesis of the accusations against him. In this respect, he complained to VISN 6 about the failure of veterans to receive necessary custom prosthetics because of attempts by some within the VA bureaucracy to cut corners by supplying “off-the-shelf,” but unsuitable, prosthetics. He also intervened with VISN 6 on behalf of veterans when they were being denied travel reimbursement simply because they did not have drivers’ licenses. Mr. Miska also drew the ire

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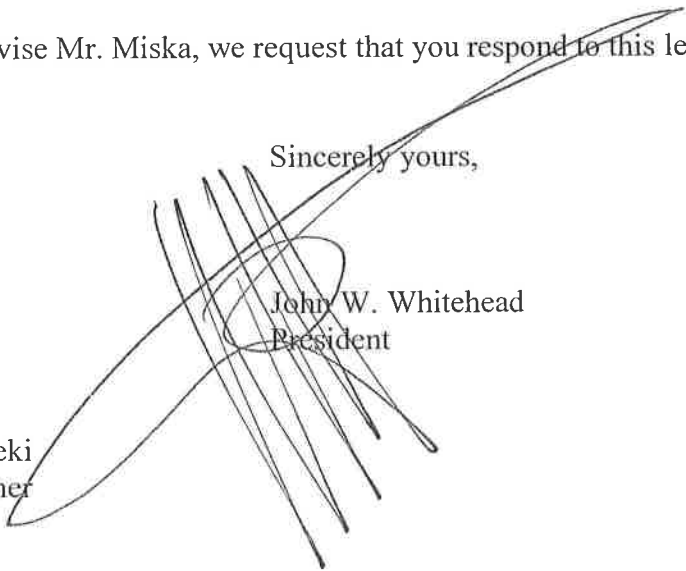
of VA personnel when a controversy arose over the availability of handicapped parking spaces for himself and other veterans at the Hunter Holmes McGuire Medical Center. He was accosted during an appointment at the center, ticketed for parking in a handicapped area, and improperly ordered by security personnel to delete photographs he took to corroborate his position that he was validly parked, although the Center's director later determined that the ticket should be dismissed.

Given his refusal to look the other way when veterans are being mistreated or disregarded, Mr. Miska's advocacy activities have drawn the ire of VA officials and employees, which in turn resulted in the complaints that prompted your letter. However, Mr. Miska has rightly sought to assure that these officials and employees perform the duties they are required to perform so that he and other veterans receive the medical care to which they are entitled under law. Indeed, his advocacy activities are an exercise of his fundamental constitutional rights to speech and to petition the government for the redress of grievances. While Mr. Miska may be determined in his advocacy and has "ruffled the feathers" of VA personnel, his actions have been warranted in the cause of securing health services for his brothers in arms.

Therefore, on behalf of Mr. Miska, we ask that you disavow and withdraw any threat to deny Mr. Miska treatment at VA facilities because of his advocacy activities. Moreover, we expect your full cooperation in ensuring that employees of the Hunter Holmes McGuire Medical Center respect the rights of Mr. Miska and other veterans to freely exercise their First Amendment rights, even in those instances when their speech is critical of your agency and its operatives.

In order that we may advise Mr. Miska, we request that you respond to this letter on or before November 11, 2013.

Sincerely yours,



John W. Whitehead
President

cc: The Hon. Eric K. Shinseki
The Hon. Mark R. Warner
The Hon. Tim Kaine
The Hon. Eric I. Cantor
The Hon. Robert Hurt